

Amendments to the Drawing:

The attached drawing sheet includes changes to the sole Figure. In the Figure, the solid carbon dioxide (dry ice) 29 is denoted.

Attachment: Replacement Sheet

REMARKS

Favorable consideration and allowance are respectfully requested for claims 1-10, 14-16 and 18 in view of the foregoing amendments and the following remarks. Claims 11-13 and 17 were previously cancelled.

A replacement Figure is provided herewith to show the solid carbon dioxide 29. The specification is also amended to reflect this element. It should be understood that this element is not a requirement of the invention but instead is only representative of certain embodiments. Withdrawal of the objection to the drawings is respectfully requested.

The rejection of claims 1-2, 5-10, 14-16 and 18 under 35 U.S.C. 102(b) as anticipated by Renzo et al. (EP 0542055 A-1) and of claims 1-10, 14-16 and 18 as obvious over the same reference, is respectfully traversed.

Independent claims 1, 6 and 7 recite that the carbon dioxide flow is shut off if the temperature falls below 7°C. Thus, in accordance with the invention, temperatures below 7°C are avoided.

In contrast, Renzo discloses a temperature range of from 0°C to 15°C - see column 1, lines 53-58. As explained previously, at the low end of this temperature range the grapes would at least partially freeze. Freezing of the grapes has a negative effect on the taste of the wine produced by the process. Renzo apparently did not appreciate this effect, and instead calls for a preferred temperature of 5°C. The present inventors determined that even 5°C is too cold

for the grapes and that such a low temperature negatively effects the resulting wine.

There is no disclosure anywhere in Renzo to stop the cooling process if the temperature drops below 7°C. According to Renzo, it does not matter whether the temperature is a warm 15°C or an icy 0°C. Indeed, the present inventors determined that 15°C is too warm while 0°C is too cold and leads to freezing. Accordingly, Renzo does not teach or suggest the claimed method, wherein the charging with carbon dioxide is interrupted if the temperature of the grapes falls below 7°C. Only the present inventors realized that by selecting the lower temperature limit of 7°C the product produced by the process can be significantly improved. This is an unexpected and unforeseen result, that is precisely the type of result that would overcome an assertion of obviousness based on Renzo. Indeed, Renzo teaches a preferred temperature that is outside of the claimed methodology. Thus, if one were to operate according to Renzo's preferred temperature, one would *never* practice the claimed method or necessarily have the claimed apparatus.

In § 2131.03, the MPEP explains that an overlapping range is not necessarily anticipatory:

If the claims are directed to a narrow range, and the reference teaches a broad range, depending on the other facts of the case, it may be reasonable to conclude that the narrow range is not disclosed with "sufficient specificity" to constitute an anticipation of the claims. *Atofina v. Great Lakes Chem. Corp.*, 441 F.3d 991, 999, 78 USPQ2d 1417, 1423 (Fed. Cir. 2006) wherein the court held that a reference temperature range of 100-500 degrees C did not describe the claimed range of 330-450 degrees C with sufficient specificity to be anticipatory.

Further, while there was a slight overlap between the reference's preferred range (150-350 degrees C) and the claimed range, that overlap was not sufficient for anticipation. "[T]he disclosure of a range is no more a disclosure of the end points of the range than it is each of the intermediate points." Id. at 1000, 78 USPQ2d at 1424. Any evidence of unexpected results within the narrow range may also render the claims unobvious.

The skilled artisan would have no reason to modify the teachings of the Renzo reference, to interrupt the charging with carbon dioxide if the temperature of the grapes falls below 7°C, as is required of the present claims. The recent Office Action argues that "Renzo et al., is capable of interrupting the flow of carbon dioxide if the temperature drops below 7 degrees C." To anticipate or render obvious a method claim, however, a disclosed apparatus must not only be capable of performing the step, the reference must actually teach or suggest all of the steps of the claimed method. This is the essence of the law that allows patents on new methods of use for previously known products. Of course the known product was always *capable* of being used in the newly inventive manner. With regard to a new method, the invention lies in the specific steps. Accordingly, the claimed invention is not only not anticipated by Renzo, but it is also nonobvious.

Claim 1 is amended to recite a step of macerating that lasts only a few hours. In addition to the foregoing distinctions, Renzo does not teach a shortened maceration time as is presently claimed. The Office Action suggests that Grassin et al. (US 6,465,026) teaches a maceration time of one hour.

Grassin teaches maceration of apple pulp to reduce the amount of pectin in the resulting juice. In contrast, grapes are macerated in the production of wine to extract flavor from the grape skin for the resulting wine. Thus, Grassin is aimed at removing part of the naturally occurring apple, whereas in wine production, macerating is performed so as to add to the flavor. Unlike apples, grapes do not have any pectin. Accordingly, based on Grassin, the skilled artisan would not consider a macerating step to be useful in the production of wine. Indeed, based on Grassin, the winemaker would have no reason to modify Renzo so as to include a macerating step.

Given these differences, the skilled artisan would not find the presently claimed invention obvious over the proposed combination of Renzo and Grassin. Indeed, it is highly unlikely that the skilled artisan would ever try to combine these references.

As described in the specification, for instance on page 1 at lines 23-26, the temperature and residence time affect the flavor of wine. Accordingly, the claims are directed to a process and apparatus which differs from that described by the cited prior art in a significant and result-directed way. The cited reference does not teach or suggest each and every limitation of the presently-pending claims and reconsideration and withdrawal of these rejections are respectfully requested.

CONCLUSION

In view of the foregoing, the application is respectfully submitted to be in condition for allowance, and prompt favorable action thereon is earnestly solicited.

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket No. 038724.56071US).

Respectfully submitted,

September 2, 2008

/Christopher T. McWhinney/
Christopher T. McWhinney
Registration No. 42,875

Robert L. Grabarek, Jr.
Registration No. 40,625

CROWELL & MORING LLP
Intellectual Property Group
P.O. Box 14300
Washington, DC 20044-4300
Telephone No.: (202) 624-2500
Facsimile No.: (202) 628-8844
RLG:CTM

6287225